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June 1, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 97-234
GC Docket No. 92-52
GEN Docket No. 90-264

Dear Ms. Salas:

Transmitted herewith, on behalf of William M. Smith, are an original and four copies of his "Opposition to Request for Clarification and/or Reconsideration" with regard to the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

Anne Goodwin Crump

Anne Goodwin Crump
Counsel for William M. Smith

Enclosures

No. of Copies rec'd 0+4
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ORIGINAL

Before the
Federal Communications Commission
Washington DC 20554

| | | |
|---|---|-----------------------|
| In the Matter of |) | |
| |) | |
| Implementation of Section 309(j) of the |) | MM Docket No. 97-234 |
| Communications Act -- Competitive Bidding for |) | |
| Commercial Broadcast and Instructional Television |) | |
| Fixed Service Licenses |) | |
| |) | |
| Re-examination of the Policy Statement on |) | GC Docket No. 92-52 |
| Comparative Broadcast Hearings |) | |
| |) | |
| Proposals to Reform the Commission's |) | GEN Docket No. 90-264 |
| Comparative Hearing Process to Expedite the |) | |
| Resolution of Cases |) | |

Directed to: The Commission

**OPPOSITION TO REQUEST FOR
CLARIFICATION AND/OR RECONSIDERATION**

William M. Smith, by his attorneys, hereby respectfully submits his Opposition to the "Request for Clarification and/or Reconsideration" submitted in the above-captioned proceeding by Snyder Hill Broadcasting, Inc. ("Snyder Hill") on May 19, 1999. With respect thereto, the following is stated:

1. Snyder Hill's pleading, whatever its title, must be dismissed summarily as a repetitive and unauthorized submission.¹ Snyder Hill is now seeking a third bite at the same apple in this

¹ As an initial matter, it also must be recognized that, while Snyder Hill represents itself to be one of two remaining applicants in the Ithaca, New York, television proceeding, such is not yet the case. Two of the applicants in that proceeding have indeed entered into a "Settlement Agreement, Agreement to Merge, Form a Corporation and Operate a Business," and they submitted a "Joint Request for

proceeding. One of Snyder Hill's predecessors-in-interest, Linear Research Associates, filed Comments in this proceeding, and Snyder Hill itself submitted a "Petition for Reconsideration" in this proceeding. Both previous documents addressed the same basic point, and the Commission rejected Snyder Hill's arguments in both instances. Snyder Hill is now coming back for a third try at the same issue. Accordingly, since reconsideration was previously denied on the same issue now raised again by Snyder Hill, its pleading should be dismissed by the Commission's staff as repetitious. *See*, 47 C.F.R. §1.106(k)(3). Furthermore, Snyder Hill is attempting to litigate a particular proceeding in the guise of a general rule making. The inappropriate nature of this filing also serves as separate grounds for its dismissal.

2. As set forth above, the stockholders of Snyder Hill are parties to applications for a construction permit for a new television station at Ithaca, New York. Smith is the only other applicant with a mutually exclusive application in that proceeding. Over the past three years, Snyder Hill and its stockholders have filed numerous documents, both in the Ithaca proceeding and elsewhere, seeking to have Smith's Ithaca application dismissed or denied. Clearly, Snyder Hill and its shareholders are seeking any way possible to remove Smith from the Ithaca proceeding so that the way will be cleared for Snyder Hill to obtain the construction permit without the need to go to an auction.

3. The problem for Snyder Hill is that the Commission has now twice determined in this proceeding that it will defer basic qualifications issues until after the auction in a particular

Approval of Settlement Agreement" to the Commission on December 31, 1996. As yet, however, the Commission has not yet acted on the Joint Request. Accordingly, as recognized by the Commission's *Public Notice*, "Closed Broadcast Auctions Scheduled for September 28, 1999," Report No. AUC-99-25-A, DA 99-940, released May 17, 1999, three applicants currently remain in the Ithaca Proceeding. *Id.* at Attachment A, p. 1.

proceeding. In the *Notice of Proposed Rule Making* in this proceeding, 12 FCC Rcd 22363 (1997) (“*NPRM*”), the Commission had proposed to adopt such an approach with regard to pending applications. In response to the *NPRM*, Linear Research Associates submitted comments and reply comments opposing this plan. Thereafter, in the *First Report and Order*, FCC 98-234, released August 18, 1998, the Commission stated that it would indeed defer resolution of unresolved issues until after the auction, “regardless of the number of remaining applications or whether the adverse resolution of outstanding basic qualifying issues would eliminate all but one applicant.” *Id.* at 34 ¶ 89.

4. Snyder Hill then filed a Petition for Reconsideration of the *First Report and Order*, again arguing that it would be unfair for it to be required to participate in an auction with an applicant which it has claimed is unqualified. Snyder Hill also argued that the Commission should resolve qualifying issues in proceedings in which only two applicants remain. In the Commission’s *Memorandum Opinion and Order* on reconsideration, FCC 99-74, released April 20, 1999, it again rejected Snyder Hill’s and denied reconsideration. The Commission therein reiterated that it is “not persuaded that a different approach is warranted in proceedings involving only two applications.” *Id.* at 10.

5. Having been rejected twice, Snyder Hill now has sought further reconsideration from the Commission. This time, Snyder Hill has attempted to draw a distinction between applications with basic qualifying issues and those which are defective. In a decision ironically adopted on the same day that Snyder Hill filed its latest pleading, the Commission specifically rejected that claimed distinction. *Rio Grande Broadcasting*, FCC 99-111, released May 25, 1999. The Commission stated:

Our auction procedures were designed to avoid litigation over potentially irrelevant issues that would serve only to delay service to the public. These procedures, however, make no distinction between issues that could result in the denial of an application and issues that could result in the dismissal of an application.


Id. at 5. *Rio Grande Broadcasting* involved a claim that one of the applicants did not submit an original signature with her application as filed. Clearly, this claimed lack of an original signature is a defect which normally would result in the dismissal of an application prior to that application's being accepted for filing. In that way, the defect at issue in *Rio Grande Broadcasting* is of the same kind, or worse than, Snyder Hill's claims concerning technical deficiencies in Smith's application.

6. Thus, the Commission has already considered and rejected the very argument raised by Snyder Hill in its "Request for Clarification and/or Reconsideration." Moreover, as set forth above, the Commission has already settled the basic issue raised by Snyder Hill twice before and has twice before rejected its arguments. Accordingly, Snyder Hill's latest pleading should be given no further consideration and should be dismissed immediately as repetitious.

Respectfully submitted,

WILLIAM M. SMITH

By:



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June 1, 1999

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary for the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that a true copy of the foregoing "Opposition to Request for Clarification and/or Reconsideration" was sent this 1st day of June, 1999, by first class mail, postage prepaid, to the following:

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